

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-04-IH-0157
)	
New Edge Network, Inc.)	Acct. No. 200432080185
)	
)	FRN No. 0003-7204-71

ORDER

Adopted: September 10, 2004

Released: September 13, 2004

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (“Bureau”) has been conducting an investigation into possible violations by New Edge Network, Inc. (“New Edge”) of section 254 of the Communications Act of 1934, as amended,¹ and sections 54.706, 54.711, 54.713,² and related provisions of the Commission’s rules in connection with the universal service support mechanism reporting and contribution requirements.³

2. The Bureau and New Edge have negotiated the terms of a Consent Decree that would terminate the Bureau’s investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. We have reviewed the terms of the Consent Decree and evaluated the facts before us. We believe that the public interest would be served by approving the Consent Decree and terminating the investigation.

4. Based on the record before us, and in the absence of material new evidence relating to this matter, we conclude that there are no substantial or material questions of fact as to whether New Edge possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

¹ 47 U.S.C. § 254.

² 47 C.F.R. §§ 54.706, 54.711, 54.713.

³ See Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC to Penny H. Bewick, Vice President-External Affairs, New Edge Network, Inc. (May 21, 2004).

5. Accordingly, IT IS ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the attached Consent Decree IS ADOPTED.

6. IT IS FURTHER ORDERED that the above captioned investigation is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“Commission”) and New Edge Network, Inc. (“New Edge”) hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether New Edge violated the universal service reporting and contribution requirements of section 254 of the Communications Act of 1934, as amended (the “Act”)¹ and sections 54.706, 54.711, and 54.713 of the Commission’s rules.²

2. For the purposes of this Consent Decree, the following definitions shall apply:

- (a) “Commission” means the Federal Communications Commission.
- (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (c) “New Edge” means New Edge Network, Inc., any affiliate, d/b/a, predecessor-in-interest, parent companies, any wholly or partially owned subsidiary, or other affiliated companies or businesses and their successors and assigns.
- (d) “Parties” means New Edge and the Bureau.
- (e) “Order” or “Adopting Order” means an Order of the Commission or the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (f) “Effective Date” means the date on which the Commission or the Bureau releases the Adopting Order.

¹ 47 U.S.C. § 254.

² 47 C.F.R. §§ 54.706, 54.711, 54.713.

(g) “Investigation” means the investigation commenced by the Bureau’s May 21, 2004 Letter of Inquiry³ regarding whether New Edge violated the universal service reporting and contribution requirements of section 254 of the Act and sections 54.706, 54.711, and 54.713 of the Commission’s rules.

I. BACKGROUND

3. Pursuant to section 254(d) of the Act and sections 54.706, 54.711, and 54.713 of the Commission’s rules, telecommunications carriers that provide interstate telecommunications services and private service providers that provide interstate telecommunications services are required to file annual and quarterly Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q) and contribute to the Universal Service Fund.⁴

4. New Edge offers virtual private networks and is a broadband service provider, with resale agreements in small and mid-sized markets. On May 21, 2004, the Bureau issued a Letter of Inquiry (“LOI”) to New Edge requesting information about New Edge’s compliance with the universal service contribution requirements. New Edge submitted a response to the Bureau’s LOI on June 10, 2004. New Edge admitted that it had a substantial balance due for past universal service contributions. New Edge explained that it was paying a significant amount in addition to its monthly contribution amount, in order to eliminate the past due balance. New Edge began making these additional monthly payments in December 2003, six months before the Bureau commenced its investigation.

II. AGREEMENT

5. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau, through entry of the Order, which shall immediately resolve and terminate the Investigation.

6. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission’s rules and orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, New Edge does not admit or deny liability for violating any statute, regulation, or administrative rule in connection with matters that are the subject of this Consent Decree.

³ See Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC to Penny H. Bewick, Vice President-External Affairs, New Edge Network, Inc. (May 21, 2004).

⁴ 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706, 54.711, 54.713.

7. New Edge agrees that it will make a voluntary contribution to the United States Treasury in the amount of fifty thousand dollars (\$50,000) within 30 calendar days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include "Acct. No. 200432080185" and "FRN No. 0003-7204-71." Payment by check or money order must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

8. For purposes of settling the matters set forth herein, New Edge agrees to implement a compliance program related to future compliance with the Act, the Commission's rules, and the Commission's orders. The program will include, at a minimum, the following components:

(a) Compliance Manual. The Company shall develop and update as necessary a Compliance Manual. Company personnel shall have ready access to the Compliance Manual and are to follow the procedures contained in it. The Compliance Manual will describe the universal service rules and requirements as they apply to New Edge. The Compliance Manual will encourage personnel to contact the Company's Legal Department, the Company's Chief Executive and/or Chief Financial Officer with any questions or concerns that arise.

(b) Compliance Training Program. The Company will establish an FCC compliance training program for employees who engage in activities subject to FCC regulation. Training sessions will be conducted at least annually to ensure compliance with the Act and the FCC's regulations and policies and, for new employees, within the first 30 days of employment.

(c) Designated Contact. The Company will designate one employee as the point of contact for all regulatory compliance matters.

(d) Review and Monitoring. The Company will review the Program annually to ensure that it is maintained in a proper manner and continues to address the objectives set forth therein.

9. New Edge agrees to make timely contributions to the universal service fund of its monthly contribution amount and late payment fees, if any, as required by the Commission's rules. New Edge further agrees to pay to the universal service fund on or before the 15th of each month additional payments representing delinquent contributions, interest, late charges, administrative charges, and late payment fees as follows: September 15, 2004 through November 15, 2004, \$70,000 per month; December 15, 2004 through May 15, 2005, \$100,000 per month; June 15, 2005 through September 15, 2005, \$534,897.61 per month. If the 15th of the month is not a business day, the additional monthly payment is due the prior business day. The additional monthly payment is to be made in a separate payment from monthly contributions to

the universal service fund. The additional monthly payment must include the Filer 499 ID and the company name. The payment instructions are as follows:

- Check payments: If sending by US Mail or major courier service (e.g., Airborne, Federal Express, or UPS), please send check payments to

**Universal Service Administrative Company
1259 Paysphere Circle
Chicago, IL 60674**

- ACH Payments: ACH Payments should be sent in a CCD+ format to

**ABA Number 071000505
Bank Account Number 5590045653**

10. New Edge agrees that in the event it shall fail, after the Effective Date, to make a timely required contribution as described in Paragraph 9 to the universal service fund it will be in default of this Consent Decree. In addition to any other penalties which may be assigned pursuant to applicable law, New Edge will be required to make payments sufficient to satisfy all remaining disbursements described in Paragraph 9 above. Such payments will be made in no more than three installments, each no more than 30 days apart, to be completed within 90 days after receipt of written notice to New Edge from the Bureau stating that New Edge is in default.

11. The Bureau agrees that it will not use the facts developed in this Investigation through the Effective Date of the Consent Decree or the existence of this Consent Decree to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against New Edge concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree or the existence of this Consent Decree to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against New Edge with respect to New Edge's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier.

12. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against New Edge or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating material new evidence of noncompliance by New Edge of the Act, the rules, or this Order.

13. New Edge waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Bureau issues an Order adopting the Consent Decree without change, addition, modification, or deletion. New

Edge shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein.

14. New Edge's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, modification, or deletion.

15. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

16. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither New Edge nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and New Edge shall waive any statutory right to a trial *de novo*. New Edge shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein.

17. Any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights or remedies authorized by law attendant to the enforcement of a Commission order.

18. The Parties also agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which New Edge does not consent) that provision will be superseded by such Commission rule or order.

19. New Edge hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

20. This Consent Decree may be signed in counterparts.

David H. Solomon
Chief, Enforcement Bureau
Federal Communications Commission

Date

Dan Moffat
President and CEO
New Edge Network, Inc.

Date